

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Letters Patent Appeal No. 656 of 2016 (O&M)
Date of decision: 25.4.2016

**Punjab State Water Resources Management & Development
Corporation Ltd. and another**

.. Appellants

v.

Nitya Nand and another

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. P. S. Thiara, Advocate for the appellants.

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Rajesh Bindal J.

Aggrieved against the judgment of the learned Single Judge, the appellants have filed the present intra-court appeal along with an application for condonation of delay of 5 days in filing thereof.

The issue is regarding date of birth of respondent No. 1, as mentioned in the service record. The appellants claimed that his date of birth was 14.9.1953, whereas respondent No. 1 claimed the same to be 14.9.1957. The contention sought to be raised is that there is no document on record to establish the fact that the correct date of birth of respondent No. 1 was 14.9.1957. In fact, on enquiry from the educational institution, the certificate of which was produced, the same could not be verified. However, we do not find any reason to interfere with the impugned judgment of the learned Single Judge. After discussing the issue threadbare, the findings have been recorded in paragraph 15 thereof, which is extracted below:

“15. One is now left with an analysis of two letters both from the Headmaster, High School, Pathuria. One bearing No.83 dated 19th March, 1986 (Annex P-5) and the other bearing No.12/2001 dated 24th April, 2001 (Annex R-4). They are 15 years apart. Now the question is which one is to be believed. Both the letters are addressed directly to the Corporation. The inquiry conducted by the Police at Mohali on complaint No.4663/5A/P.S. Phase-I, Mohali dated 3rd December, 2013 submitted by the Corporation regarding registration of criminal case against the petitioner in which the senior officers of the Corporation were associated during the investigation make no mention of the letter dated 24th April, 2001 (Annex R-4) even though it was available to the Corporation for production when it was the complainant pursuing its case for registration of an FIR against the petitioner. In the report, the Police have made it clear after investigation that the department bears personal grudge against the petitioner and has been making false complaint in getting inquiries conducted, for which the opinion of the Deputy District Attorney (Legal), SAS Nagar is required. The report of the Committee [5 member] was taken cognizance of in the police inquiry report. Statements of witnesses have been recorded of the functionaries of the Corporation and the petitioner. The petitioner has faced charge sheets earlier on the same issue, which have been dropped. If two charge sheets on the same allegation was issued in 1996 and 2006 and both of them filed then it appears rather unfair to keep the dispute alive. Equally well settled it is when a predecessor-in-interest has taken a conscious decision to drop the inquiry, twice over, then the successor-in-interest should not re-open what is closed, only to attempt taking a different view. Such a

course can be adopted when the incumbent authority is faced with unimpeachable and irrefutable evidence to avoid a miscarriage of justice which material was either not to the knowledge of the decision maker in the past while it existed or comes to notice later which would alter the decision so materially that avoidance in cognizance would result in grave injury to employer. Then the case can well be reignited. But such is not the position in the instant case where the employer has been out for years fox hunting the petitioner down; a small man rising from Peon to Ferro Printer.”

A perusal of the aforesaid paragraph shows that besides enquiry by the police twice, respondent No. 1 was issued charge-sheets with same allegations in the year 1996 and 2006 and both of them were filed. When the competent authority had earlier taken a conscious decision to file the charge-sheets on the same issue and drop the enquiry proceedings, the appellants could not be permitted to take up the same again and again. Respondent No. 1 was a small time employee, who started his career as Peon and retired as Ferro Printer.

While concurring with the view expressed by the learned Single Judge, we do not find any reason to interfere with the impugned judgment. Accordingly, the present appeal is dismissed. Consequently, the application for condonation of delay is also dismissed.

(Rajesh Bindal)
Judge

(Harinder Singh Sidhu)
Judge

25.4.2016
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